

APPEAL NO. 040695
FILED MAY 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 23, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable left shoulder and cervical sprain/strain injury on _____; that the claimant's compensable injury of _____, does not extend to and include an injury to the low back, thoracic area, disc herniations at C3-4, C4-5, and C5-6, and the right shoulder; that the respondent (self-insured) waived the right to contest compensability of the claimant's claimed left shoulder injury under Section 409.021; that the self-insured did not waive the right to contest compensability of the claimant's claimed low back, thoracic area, disc herniations at C3-4, C4-5, and C5-6, and right shoulder injury; that the claimant's average weekly wage (AWW) was \$239.59 during the school term and \$0.00 during the summer term; and that the claimant had disability from August 11, 2003, through the date of the CCH. The claimant appeals the hearing officer's determinations that her compensable injury does not extend to include the low back, thoracic area, cervical disc herniations, and right shoulder, and that the self-insured did not waive the right to contest compensability of the low back, thoracic area, cervical disc herniations, and right shoulder. The self-insured requests affirmance. There is no appeal of the hearing officer's determinations on the AWW and disability issues, the determination that the self-insured waived the right to contest compensability of the claimant's claimed left shoulder injury, or the determination that the claimant sustained a compensable left shoulder and cervical sprain/strain injury.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left shoulder and cervical sprain/strain injury. Conflicting evidence was presented on the issue of the extent of the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence on the issue of the extent of the claimant's compensable injury, we conclude that the hearing officer's determination that the claimant's compensable injury does not include an injury to the low back, thoracic area, cervical disc herniations, and right shoulder is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) provides that Section 409.021 does not apply to disputes of extent of injury. The claimant contends that the self-insured is attempting to recast the primary injury as an extent

issue to avoid the mandates of Section 409.021 and cites several Appeals Panel decisions in support of its contention. The hearing officer considered the claimant's assertion and found that the self-insured's extent-of-injury dispute was not a veiled attempt to circumvent the requirements of timely contesting compensability. As noted, the hearing officer is the sole judge of the weight and credibility of the evidence. Under the circumstances presented, we cannot conclude that the hearing officer erred as a matter of law in determining that the self-insured did not waive the right to contest compensability of the claimant's low back, thoracic area, cervical disc herniations, and right shoulder because such was an extent-of-injury dispute.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge